

**OWNER PARTICIPATION AGREEMENT  
(2216 Lincoln Avenue)**

THIS OWNER PARTICIPATION AGREEMENT (2216 Lincoln Avenue) (the “**Agreement**”) is made as of \_\_\_\_\_, 2011 (the “**Effective Date**”), by and among the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body corporate and politic (“**CIC**”), the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic (“**Owner**”), SATELLITE HOUSING, INC., a California nonprofit public benefit corporation (“**Satellite Housing**”), and HOUSING CONSORTIUM OF THE EAST BAY, a California nonprofit public benefit corporation (“**HCEB**”). Satellite Housing and HCEB shall be jointly referred to herein as “**Developer**”.

**RECITALS**

This Agreement is entered upon the basis of the following facts, understandings and intentions of the CIC, Owner, and Developer, sometimes individually referred to as a “**Party**” or collectively referred to herein as the “**Parties**”.

A. In accordance with the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*, as it may be amended from time to time) (“**Redevelopment Law**”), the City Council of the City of Alameda (the “**City**”) approved and adopted on June 18, 1991, by Ordinance No. 2559, the Community Improvement Plan (as amended, the “**Community Improvement Plan**”) for the Business and Waterfront Improvement Project (the “**BWIP**”).

B. The property subject to the Community Improvement Plan is referred to herein as the “**Project Area**”.

C. On June 15, 2010, the CIC approved and adopted by Resolution No. 10-167 that certain “Implementation Plan, Fiscal Years 2009/10-2013/14, Alameda Redevelopment Project Areas: Business and Waterfront Improvement Project & West End Community Improvement Project”, dated March 2010, prepared by Keyser Marston Associates, Inc. (the “**Implementation Plan**”). The Implementation Plan was prepared in accordance with the requirements of Section 33490 of Redevelopment Law.

D. The Implementation Plan identified specific affordable housing projects to be developed over the next five (5) years in the Project Area. The list of specific projects includes a 19-unit multifamily residential building and related improvements, comprised of eighteen (18) units for very-low income residents and one (1) unit for a moderate income, resident manager (the “**Project**”), on certain real property located in the City of Alameda, County of Alameda, State of California, commonly known as 2216 Lincoln Avenue, more particularly described in Exhibit A hereto and incorporated into this Agreement by reference (the “**Property**”), which the Implementation Plan identified as located outside the Project Area. The Implementation Plan also provides that the Project “will be partially funded with BWIP funds in

exchange for a [long-term] covenant. Therefore, nine very low-income units are included as production units” for the Project Area.

E. On May 6, 2003, by Resolution No. 13578, the City approved the use of tax increment funds from the Project Area “for the purpose of increasing, improving and preserving the community’s supply of low- and moderate-income housing available at affordable housing cost outside the Project Area will be of benefit to the [BWIP]”.

F. Pursuant to California Environmental Quality Act (“**CEQA**”), the City, as the lead agency has undertaken the required analysis of the environmental impacts of this project and based on its independent judgment and based on substantial evidence in the record, found the project to be exempt from CEQA pursuant to California Public Resources Code sections 21159.21, 21159.23 (exemption for affordable housing) and 21159.24 (exemption for infill affordable housing), as well as CEQA Guidelines section 15332 (unfill development projects). Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines section 15300.2 in that the project will not have any significant effects due to unusual circumstances or any cumulatively significant impacts and will not adversely impact any designated historic resources,

G. The CIC and Owner selected Developer to develop the Project for very low-income, developmentally disabled residents on the Property, as further described in this Agreement.

H. On \_\_\_\_\_, 2011, by Resolution No. \_\_\_\_\_, the CIC authorized the use of affordable housing funds generated from the BWIP in a not-to-exceed amount for development of the Project as more particularly described Section 4.3 below. Resolution No. \_\_\_\_\_ authorizes the Executive Director of the CIC or his or her designee to execute the necessary documents related to the BWIP Housing Funds loan transaction.

I. Concurrently herewith, the CIC shall convey the Property to Owner by quitclaim deed recorded in the Official Records of the County of Alameda, California (the “**Official Records**”), which conveyance was authorized by Resolution No. \_\_\_\_\_ and acceptance was authorized by Resolution No. \_\_\_\_\_.

J. Owner and Developer intend to enter into a Ground Lease Agreement (as amended, the “**Ground Lease**”) to facilitate the development of the Project on the Property.

K. The purpose of this Agreement is to address the development by Developer of the Project. The development of the Project is in furtherance of, and consistent with, the City of Alameda General Plan and the Implementation Plan.

L. The Property has a unique and special importance to the CIC and Owner because of its location, the nature of the improvements and the uses contemplated for the Property, the proximity of the Property to the Project Area, and the substantial expenditures of public funds that have been and will be made with respect to the Property and the Project. The CIC and Owner desire to advance the socioeconomic interests of the City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing housing and employment opportunities for residents

and expanding the City's property tax base. The CIC and Owner also desire to obtain public benefits from the Project which advance the redevelopment objectives of the CIC and the housing objectives of Owner to provide benefits to the City and its residents.

M. The CIC and Owner have determined that by entering into this Agreement: (i) the CIC will ensure the productive use of underdeveloped property and foster orderly growth and quality development of the Property; (ii) development will proceed in accordance with the goals and policies set forth in the Implementation Plan; and (iii) the City will benefit from additional affordable housing. The Project proposed pursuant to this Agreement and the fulfillment generally of this Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents; are in accordance with the public purposes and provisions of applicable state and local laws and requirements; and are consistent with, in furtherance of, and necessary to, the effectuation of the Community Improvement Plan through the Implementation Plan.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the CIC, Owner, and Developer agree as follows:

## ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The preamble and recitals to this Agreement, and all definitions contained in both, are incorporated herein by this reference. In addition, the following definitions shall govern this Agreement:

(a) **"Agreement"** means this Owner Participation Agreement, including the attached exhibits and all subsequent amendments to this Agreement.

(b) **"CIC"** means the Community Improvement Commission of the City of Alameda, a public body, corporate and politic, exercising governmental powers and organized and existing pursuant to Redevelopment Law. The principal office of the CIC is 2263 Santa Clara Avenue, Room 120, Alameda, California 94501. Actions to be undertaken by the CIC under this Agreement may be undertaken by the CIC or, in such instances where the CIC Executive Director has the authority to act on behalf of the CIC, such actions may be undertaken by the CIC Executive Director.

(c) **"CIC Executive Director"** means the executive director or interim executive director of the CIC, as applicable, in his or her capacity as a staff representative of the CIC or his or her designee.

(d) **"City"** means the City of Alameda, a municipal corporation, operating through its governing body, the City Council and its various departments. The principal office of the City is 2263 Santa Clara Avenue, Alameda, California 94501.

(e) **"Commencement of Construction"** means (i) all necessary building permits have been obtained; (ii) an appropriate contract for construction with a licensed contractor has been executed; and (iii) groundbreaking in the form of foundation trenching has commenced.

(f) **“Developer”** means jointly Satellite Housing, whose principal office is located at 1521 University Avenue, Berkeley, CA 94703, and HCEB, whose principal office is located at 1736 Franklin Street, 6th Floor, Oakland, CA 94612. Wherever the term “Developer” is used herein, such term shall include its successors and assigns.

(g) **“Development Approvals”** means the approvals applicable to the Project. The Development Approvals include any amendments thereto that are adopted from time to time in accordance with Agreement.

(h) **“Foreclosure Transferee”** means a Lender or other transferee of the Project which acquires the Project through a judicial foreclosure, nonjudicial foreclosure, or deed-in-lieu of foreclosure under any Loan, or the ground lessee under a new lease pursuant to the mortgagee protection provisions of the Ground Lease.

(i) **“HUD”** means the U.S. Department of Housing and Urban Development.

(j) **“Improvements”** shall mean the buildings, structures and other improvements, including the building fixtures therein, hereafter constructed on the Property.

(k) **“Lender(s)”** shall mean each and all of the lenders providing the Loans to Developer for the Project and/or Improvements and shall also mean any entity which controls, is controlled by, or is under common control with, Lender, and which becomes a Foreclosure Transferee.

(l) **“Loans”** shall mean the loans now or hereafter obtained by Developer to finance construction and operation of the Project, as evidenced by promissory notes and secured by leasehold deeds of trust (and any related security documents, including security agreements, fixture filings, and financing statements) which are given by Developer.

(m) **“Owner”** means the person, persons or entity which possesses legal title to the Property, which as of the date of this Agreement is the Housing Authority of the City of Alameda, a public body, corporate and politic. The principal office of Owner is 701 Atlantic Avenue, Alameda, California 94501. Actions to be undertaken by Owner under this Agreement may be undertaken by Owner or, in such instances where the Owner’s Chief Executive Officer or Executive Director has the authority to act on behalf of Owner, such actions may be undertaken by the Owner’s Chief Executive Officer or Executive Director, as applicable.

(n) **“Owner’s Chief Executive Officer”** means the chief executive officer of Owner in his or her capacity as a staff representative of Owner or his or her designee.

(o) **“Owner’s Executive Director”** means the executive director of Owner in his or her capacity as a staff representative of Owner or his or her designee.

(p) **“Project”** is as defined in Recital D above, together with associated infrastructure, improvements, landscaping, and related facilities on the Property.

(q) **“Property”** is as defined in Recital D above and Section 2.1 below.

(r) **“Unavoidable Delay”** shall mean for purposes of this Agreement delay in Developer’s performance of its obligations under this Agreement which are beyond the reasonable control of Developer, including but not limited to work stoppage, acts of God, acts of war, civil disorders or similar acts; and/or delays that are reasonably determined by Developer, the CIC, and Owner to arise from insufficient funds to construct the Project.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and by this reference are incorporated herein and made a part hereof:

Exhibit A	Legal Description of the Property
Exhibit B	Schedule of Performance
Exhibit C	Scope of Development
Exhibit D	Certificate of Completion
Exhibit E	Form of Promissory Note – CIC Loan
Exhibit F	Development Budget
Exhibit G	Form of Affordable Housing Agreement

## ARTICLE II TERM AND DEVELOPMENT APPROVALS

Section 2.1 Term. The term of this Agreement shall commence on the Effective Date and continue until the later of (a) the closing of permanent financing following completion of construction of the Project, (b) initial leasing of one hundred percent (100%) of the units, unless extended or earlier terminated pursuant to Article VII below; provided, however, if Commencement of Construction has not occurred any Party hereto shall have the right to terminate this Agreement after July 31, 2014.

Section 2.2 NEPA. The parties acknowledge and agree that if any federal funding is obtained for development of the Project through any federal agency (such as HUD), then this Agreement and any such federal funding shall be subject to, and specifically conditioned upon, the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto by the applicable federal agency, in accordance with the National Environmental Policy Act of 1969 (“**NEPA**”), as implemented by applicable federal regulations. Developer shall not undertake any physical or choice limiting actions, including property lease acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to approval by such federal agency of all necessary environmental review documentation required under NEPA.

Section 2.3 Development Approvals. The Project and the Property shall be developed in accordance with this Agreement and the Development Approvals.

## ARTICLE III PROJECT DEVELOPMENT

Section 3.1 Development Approvals, Plans and Permits.

(a) Approvals. Developer shall diligently and timely apply for all Development Approvals, and if applicable and available all extensions thereof to prevent the

Development Approvals from terminating or expiring. Notwithstanding anything to the contrary in the foregoing, if any Development Approvals terminate or expire solely as a result of delays in development of the Project that are beyond the control of Developer, the termination or expiration of such Development Approvals shall not constitute a default of Developer under this Agreement.

(b) Plans. Concurrent with submittal of Plans, as defined below, to the City, Developer shall submit to Owner and CIC proposed construction plans and specifications for the Project, including but not limited to engineering plans; architectural elevations; building, site and floor plans; building colors and materials; and parking plans (collectively and as approved by Owner and the CIC, the “**Plans**”). The Plans shall be consistent with the Development Approvals and any other City permits required as a condition thereof. Concurrent with its submittal of the Plans to the CIC and Owner, Developer shall apply to the City for a building permit consistent with the Development Approvals to construct the Project and thereafter shall diligently pursue issuance of building permits for any other improvements for which a building permit is required, if any, for development and construction of the Project.

(c) Delivery if Termination. If this Agreement is terminated pursuant to Section 7.2 or 7.4 below, Developer shall deliver to the Owner any plans and data in the possession of or prepared for Developer for the development of the Project and Developer shall execute any documents deemed necessary by the Owner to assign Developer’s right, title and interest in any such plans and data to the Owner. The Owner or any other person shall be free to use such plans and data, including plans and data previously delivered to the Owner, for purposes of developing the Project, without cost or liability therefor to Developer or any other person subject to Section 7.6 below.

(d) Use of Plans. Developer shall include in all contracts and authorizations for services pertaining to the planning and design of the development of the Project an express waiver by the person performing such services of any claims of ownership or any other interest in such plans and data and of any right to compensation or payment from Owner (excluding any payment required pursuant to Section 7.6 below), in the event Owner is entitled to such plans and data pursuant to the provisions of Section 3.1(c) above, and shall indemnify and hold Owner harmless against any claim made by any such person asserting rights in or to such plans and data. Developer makes no representation or warranty and expressly disclaims any such representation or warranty regarding the accuracy, suitability or contents of any plans, data, drawings, reports or illustrations furnished to the Owner and the Owner agrees to look solely to the architect or engineer of such plans or drawings in the event of any claim, loss or damage related to, or arising out of, use of same.

Section 3.2 Environmental Remediation. The CIC and Owner shall enter into, or shall have entered into, a Voluntary Cleanup Agreement (“**VCA**”) with the Department of Toxic Substances Control (“**DTSC**”) to facilitate environmental remediation oversight by DTSC. Environmental remediation of the Property shall be performed in accordance with the VCA as a part of the Project, the cost of which shall be included as part of Development Costs (as defined below). If DTSC requires on-going operation and maintenance pursuant to the VCA, then the CIC and Owner may elect to require Developer to become a party to the VCA to undertake such on-going obligations.

Section 3.3 Construction of Project. Developer, at its expense, shall construct, or cause to be constructed, the Improvements on the Property in accordance with the Plans; provided, however, Developer shall have no obligation to construct the Improvements if it is unable to obtain the necessary financing on satisfactory terms to do so, despite Developer's good faith efforts to obtain such financing. Developer shall proceed diligently to complete such construction, subject to Unavoidable Delay.

Section 3.4 Construction Bonds. Developer shall procure, or cause its general contractor for the Project to procure, performance, material and labor, and payment bonds in an amount equal to 100% of the value of the construction contract or such other reasonable amount determined by Owner, and shall furnish copies of such bonds to Owner prior to commencement of construction.

Section 3.5 Construction Standards. Construction of the Improvements and any maintenance and repair, replacements and additions in connection therewith shall be of good quality and approved by the Lenders, should approval of the Lenders be required.

Section 3.6 Liens. Developer shall have no authority, express or implied, to create or place a lien or encumbrance of any kind upon Owner's interest in the Property. Developer covenants and agrees promptly to pay all sums legally due and payable by Developer on account of any labor performed or materials supplied on the Property on which any lien is or can be legally asserted against Developer's interest in the Improvements or leasehold interest in the Property. In the event any mechanics' or materialmen's lien is filed against the Property, Developer, at its expense shall promptly cause such lien to be removed by bonding or otherwise, and Developer shall hold Owner harmless from any and all such asserted claims or liens.

Section 3.7 Permits and Easements. Owner agrees that, within ten (10) days after receipt of written request from Developer, it shall (at no expense to Owner) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which Developer may do, or cause to be done, pursuant to this Agreement, and shall also join in any grants of easements for public utilities necessary to the development of the Project.

Section 3.8 Site Access. For the purposes of assuring compliance with this Agreement, representatives of the CIC and Owner shall have reasonable right of access to the Property at normal construction and business hours. As of the effective date of the Ground Lease, Owner's access rights hereunder shall be in addition to Owner's access rights pursuant to this Agreement.

Section 3.9 Construction Obligations. Subject to Unavoidable Delay, Developer shall construct or cause to be constructed the Project within the times and in the manner set forth herein and as more particularly set forth in the schedule of performance attached hereto as Exhibit B (as updated and modified from time to time, the "**Schedule of Performance**") and scope of development attached hereto as Exhibit C (as updated and modified from time to time, the "**Scope of Development**").

Section 3.10 Compliance of Construction with Plans, Documents, and Laws. Developer shall carry out its obligations under this Agreement including, but not limited to, the construction of the Project in conformity with the approved Plans (as such Plans may be revised from time to time and, if required by applicable law, approved by the City of Alameda Community Development Department), and in compliance with all applicable laws and regulations, including all applicable federal and state labor standards and prevailing wage laws, and all environmental laws.

Section 3.11 Antidiscrimination During Construction. Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin and shall comply with all federal, state and local laws pertaining to discrimination.

Section 3.12 Mechanics' Liens. Developer shall keep the Property free of all liens by mechanics, materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer or its employees, officers, tenants, agents, consultants, and contractors (collectively, "**Agents**") to perform any due diligence, inspection, testing and other activities pursuant to this Agreement or furnish materials or claimed to have been furnished to Developer or its Agents in connection therewith. Developer shall hold harmless, indemnify and defend the CIC, Owner, and the City from and against any mechanic's or other liens arising from such work, including any liabilities, costs, losses, damages, expenses, causes of action, claims or judgments (including court costs and reasonable attorneys' fees) on account of such mechanic's or such other liens. The foregoing indemnity shall survive beyond the termination of this Agreement.

Section 3.13 Cooperation. Developer, the CIC, and Owner shall cooperate in good faith in designing, constructing, and leasing the Project to ensure that the Project will be developed expeditiously in accordance with industry standards and in a manner that maximizes the ability to obtain HUD Section 811 program funds, tax credits, bond financing and other financing for the Project. Developer shall provide, or cause to be provided, to the Owner all permit applications and submittals relating to the Project prior to submittal to the City for processing and approval. Representatives of Developer and the Owner shall meet at least monthly, either in person or telephonically, to discuss the progress and status of construction of the Project.

Section 3.14 Certificate of Completion. Within thirty (30) days after the completion of the Project as evidenced by a certificate of occupancy issued by the City and in accordance with those provisions of this Agreement the CIC and Owner shall verify the completion and provide an instrument substantially in the form attached hereto as Exhibit D (the "**Certificate of Completion**") so certifying. The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to construct the Project have been met. The Certificate of Completion and determination shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code.



Section 3.15 HUD Requirements. The parties acknowledge that in the event the Developer obtains a capital advance grant from HUD under the Section 811 program, the parties agree to modify this Agreement and the CIC Loan documents as reasonably necessary to satisfy the requirements of HUD to finance the development of the Project.

#### ARTICLE IV PROJECT FINANCING

Section 4.1 Financing Plan. The Development Budget (as defined below), describes the proposed sources and uses of funds for construction and permanent financing (“**Budgeted Funds**”).

Section 4.2 Funding Sources. Developer, CIC, and Owner shall use best efforts to implement the Project and secure all affordable housing grant funds, affordable housing loans and other affordable housing funds which may be available to the Project, including, but not limited to, funds from the following sources: affordable housing funds generated from the BWIP as described in Section 4.3 below, Multi-Family Housing Program, Tax Credit Allocation Committee, California Debt Limit Allocation Committee, HUD Section 811 program, and the Affordable Housing Program of a Member Bank of Federal Home Loan Bank (collectively, the “**Affordable Housing Financing Sources**”).

Section 4.3 BWIP Housing Funds.

(a) As described in Recital H above, the CIC authorized an amount not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000) (the “**BWIP Housing Funds**”) generated from BWIP affordable housing funds, to be used solely for development of the Project. The CIC’s obligation to provide the BWIP Housing Funds shall be decreased by the amount of any Affordable Housing Financing Sources that are not Budgeted Funds as described in the Development Budget attached hereto as Exhibit F and exceed the amount of the Budgeted Funds. For example, if Developer receives an award of a grant or a loan which was not included in the Budgeted Funds as described in the Development Budget attached hereto as Exhibit F and such grant or loan exceeds the amount of the Budgeted Funds and all such Budgeted Funds were obtained, the CIC’s obligation to fund the BWIP Housing Funds shall be reduced by the amount by which such grant or loan exceeds the Budgeted Funds as identified in the Development Budget. If the CIC has disbursed, or is obligated to disburse, the full amount of the BWIP Housing Funds due to HUD or other requirements, then Developer shall pay such amount to the CIC to be applied as repayment of the BWIP Housing Funds. It is the intention of the CIC and Owner that any such decrease shall not cause a funding gap or shortfall for the Project.

(b) In consideration of the Developer’s obligations hereunder, including without limitation, Developer’s obligation to construct the Project and to operate and maintain the Project, and subject to the terms and conditions set forth herein, the CIC shall provide the Developer with financial assistance consisting of a CIC Loan (as defined below) for reasonable and necessary costs of developing the Project as described in the Development Budget (the “**Development Costs**”), which costs may include predevelopment costs, construction costs, construction financing, or permanent financing, consisting of a loan of BWIP Housing Funds as set forth in this Section 4.3.

(i) Subject to the terms and conditions of this Agreement, including, without limitation, Developer's fulfillment of the Conditions Precedent to CIC Loan Disbursement set forth in Section 4.3(b)(iv) below and Section 4.3(a) above, the CIC shall loan to Developer BWIP Housing Funds in an amount not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000) (the "**CIC Loan**"). The CIC Loan shall be evidenced by a promissory note (the "**Promissory Note – CIC Loan**") substantially in the form attached hereto as Exhibit E. No interest shall accrue on the CIC Loan, which shall be a nonrecourse deferred loan.

(ii) The Promissory Note - CIC Loan shall be secured by a deed of trust, assignment of rents, security agreement and fixture filing ("**Deed of Trust - CIC Loan**") to be recorded in the Official Records. The Deed of Trust - CIC Loan shall encumber the Property, shall be subordinate to all financing approved by the CIC Executive Director and shall be reconveyed upon the repayment in full of the CIC Loan. The form of the Deed of Trust - CIC Loan shall be reasonably approved by the CIC Executive Director and the Developer prior to recordation.

(iii) Disbursement of CIC Loan.

(A) Subject to the terms and conditions of this Agreement, including, without limitation, Section 4.3(a) above, the CIC shall disburse the CIC Loan proceeds to Developer based on verified costs for the Project. The CIC shall only disburse funds for costs provided in the development budget approved by the CIC and Owner and attached hereto as Exhibit F (the "**Development Budget**"), which reflect the Budgeted Funds and the Development Costs described above, as such Development Budget may be revised from time to time with the Owner's Executive Director's approval, which approval shall not be unreasonably withheld. Notwithstanding anything in the foregoing to the contrary, the CIC Loan proceeds shall not be used to pay for any Development Costs incurred prior to the Effective Date of this Agreement, nor to pay for costs that have been paid with any funding sources other than funds of Satellite Housing and/or HCEB.

(B) If tax credit funds are used, following completion of construction and the closing of permanent financing for the Project, Developer shall obtain a final allocation of tax credits from the Internal Revenue Service of the Project through issuance of Form 8609. Developer shall promptly provide to the CIC a copy of the cost certification prepared for the California Tax Credit Allocation Committee. If the cost certification provides that the development proceeds exceeded the costs for the Project, Developer shall pay to the CIC within fifteen (15) business days of the final capital contribution from the tax credit investor, any excess development proceeds, which shall be used to repay the CIC Loan.

(C) Notwithstanding anything to the contrary herein, each CIC Loan installment shall be payable exclusively from available BWIP tax increment revenues actually allocated to and received by the CIC and the CIC shall have no obligation to use any other source of monies to fund the CIC Loan. The CIC's obligation to loan the CIC Loan proceeds to Developer shall immediately cease upon the first to occur of the following: (1) disbursement by the CIC to Developer of a cumulative total of CIC Loan proceeds equal to the CIC Loan, or (2) provision of alternative funding sources which eliminate the City's

obligation to provide BWIP Housing Funds to the Project.

(iv) Conditions of CIC Loan Disbursement. The CIC's obligation to make each installment of the CIC Loan is conditioned upon the satisfaction or waiver by the CIC of each and all of the conditions precedent (A) through (D), inclusive, described below (collectively, the "**Conditions Precedent to CIC Loan Disbursement**"), which are solely for the benefit of the CIC, and which shall be fulfilled or waived by the time periods provided for herein:

(A) Developer shall have executed and delivered the Promissory Note – CIC Loan to the CIC and shall have executed, acknowledged and delivered the Deed of Trust – CIC Loan to the CIC.

(B) Developer shall not be in default of any of its obligations under the terms of this Agreement, and all representations and warranties of Developer contained herein shall be true and correct.

(C) Developer shall have executed, acknowledged and delivered the affordable housing agreement substantially in the form attached hereto as Exhibit G (the "**Affordable Housing Agreement**") to the CIC.

(D) Receipt and approval by CIC of draw requests provided by Developer, together with copies of invoices and applicable documentation, including without limitation lien releases, substantiating the purpose and amount requested.

(v) Repayment of CIC Loan. Subject to Section 7.7 below, Developer shall repay to the CIC the outstanding principal balance of the CIC Loan in accordance with the Promissory Note – CIC Loan until the entire outstanding principal amount of the CIC Loan has been repaid in full.

#### Section 4.4 Section 8 Vouchers.

(a) If HUD Section 811 program funds are not secured in two (2) funding cycles, Owner may reserve up to nineteen (19) units for Section 8 project-based vouchers assistance, which will be dedicated to the Project for a fifteen (15) year term in order to leverage financing. Owner shall use best efforts to obtain all necessary awards and approvals to obtain and dedicate the Section 8 project-based vouchers prior to the scheduled Commencement of Construction of the Project and to seek extensions of the conversion and dedication thereafter.

(b) In addition, Developer shall use best efforts to obtain other forms of operating subsidies for the Project.

Section 4.5 Cooperation; Cost Escalations. Developer, the CIC, and Owner shall cooperate in good faith in financing the Project to ensure that the Project will be developed expeditiously in accordance with industry standards and in a manner that maximizes the ability to obtain tax credits, bond financing and other financing for the Project. Upon request by Owner, Developer shall provide, or cause to be provided, to Owner copies of all financing applications, documents and submittals relating to the Project for review and approval. As part

of its meetings pursuant to Section 3.13 above, representatives of Developer and Owner shall meet at least monthly to discuss the progress and status of financing of the Project. Developer shall use best efforts to avoid excess costs, cost escalations, and cost overruns in the development of the Project.

#### Section 4.6 Mortgagee Protection.

(a) Rights Subject to Agreement; Lender Not Obligated to Construct Improvements. All rights acquired by any Lender, either before or after foreclosure or transfer in lieu thereof, shall be subject to each and all of the terms, covenants, conditions and restrictions set forth in this Agreement, none of which terms, covenants, conditions and restrictions are or shall be waived by the CIC or Owner by reason of the permitting of such Loans. The Lender of any Loan, including any such Lender who becomes a Foreclosure Transferee but excluding (i) any other party who thereafter obtains title to the leasehold or any part thereof from or through such Lender, or (ii) any other Foreclosure Transferee (other than the Lender itself), shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; however, a Lender that acquires possession of the leasehold interest in the Property, either directly or through a receiver, may construct and complete the Project or such portion thereof that the Lender determines is necessary to protect the value of its security. Nothing in this Agreement shall be deemed to construe, permit or authorize any such Lender or any other Foreclosure Transferee to devote the Project or the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement and after the effective date of the Ground Lease, the Ground Lease.

(b) Notice of Default to Lender; Right to Cure. If Developer creates a Loan on the Property for construction of the Project, then so long as such Loan remains unsatisfied of record, the following shall apply:

(i) Notices of Default. Whenever the CIC and/or the Owner shall deliver any notice or demand to Developer with respect to any breach or default by Developer under this Agreement which would affect the completion of construction of the Project, the CIC and/or the Owner shall at the same time deliver a copy of such notice or demand to the Limited Partner (as defined in Section 6.5(a) below) and to each Lender who has previously made a written request to the CIC and the Owner for such notice; provided, however, that failure to deliver such notice shall in no way affect the validity of the notice sent to Developer as between the CIC and/or the Owner, as applicable, and Developer, unless cured by a Lender as hereafter provided. Each such Lender shall (insofar as the rights of the CIC and the Owner are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest. In the event there is more than one (1) such Lender, the right to cure or remedy a breach or default of Developer under this Section 4.6(b)(i) shall be exercised by the Lender first in priority or as the Lenders may otherwise agree among themselves, but there shall be only one (1) exercise of such right to cure and remedy a breach or default of Developer under this Section 4.6(b)(i). The Limited Partner shall have the same rights as any Lender authorized under this Section 4.6(b)(i).

(ii) Construction of Improvements. Nothing contained in this Agreement shall be deemed to permit or authorize a Lender or a third party procured by Lender or a successful purchaser at a foreclosure sale (such third party or successful purchaser hereinafter referred to as “**Substitute Developer**”) to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) on the Property without (A) first having expressly assumed Developer’s obligations under this Agreement by written agreement as set forth in Section 4.6(b)(iii) below; (B) with respect to a Substitute Developer only, the submittal of evidence reasonably satisfactory to the CIC and Owner that such Substitute Developer has the financial capacity necessary to perform such obligations; and (C) with respect to a Substitute Developer only, the submittal of evidence reasonably satisfactory to the CIC and Owner that such Substitute Developer has the construction expertise to complete Developer’s construction obligations as set forth in this Agreement and, if applicable, the Ground Lease; provided, however, that CIC and Owner shall approve any Substitute Developer with financial capacity and construction expertise equal to or greater than the original Developer.

(iii) Completion of Improvements. In the event Lender or a Substitute Developer (as applicable, “**New Developer**”) desires to assume Developer’s obligations hereunder then such written assumption agreement to be executed by CIC, Owner and such New Developer shall contain an agreement to complete the Project in the manner provided in this Agreement and, if applicable, the Ground Lease, including the affordability covenants provided therein, and in accordance with the requirements of all applicable funding sources that survive any foreclosure proceeding; provided, however, that (A) such New Developer shall not be bound by the provisions of the Schedule of Performance as to completion of the Project but shall only be required to complete the Project with due diligence, (B) such New Developer shall only be required to complete the Project in accordance with the Scope of Development; and (C) CIC, Owner and New Developer shall negotiate in good faith such reasonable amendments and reasonable modifications to the Development Budget (including, without limitation, the availability to New Developer any CIC Loan funds not yet disbursed to original Developer) as the parties determine to be reasonably necessary based upon the financial and construction conditions then existing. Any such New Developer properly completing the Project shall be entitled, upon written request made to the CIC, to a Certificate of Completion from the CIC.

(iv) Foreclosure Proceedings. Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default by Developer hereunder, the CIC and the Owner shall take no action to effect a termination of this Agreement without first giving to any Lender which has requested notice thereof and the Limited Partner written notice thereof and a reasonable time thereafter within which either (A) to obtain possession of the Property (including possession by a receiver) or (B) to institute, prosecute and complete foreclosure proceedings with diligence or otherwise acquire the Property with diligence; provided, however, that if such default is reasonably susceptible of being cured at any time, Lender shall commence and diligently prosecute such cure as a condition to the CIC’s and the Owner’s taking no action as set forth above. A Lender upon acquiring the Property shall be required promptly to cure all other defaults of Developer relating to the Property then reasonably susceptible of being cured by such Mortgagee other than a default by Developer with respect to constructing the Improvements, subject to Sections 4.6(b)(ii) and 4.6(b)(iii) above; provided, however, that: (X) such Lender shall not be obligated to continue such possession or to continue

such foreclosure proceedings after such defaults have been cured; (Y) nothing herein contained shall preclude the CIC and/or the Owner, subject to the provisions of this Section 4.6, from exercising any rights or remedies under this Agreement with respect to any other default by Developer during the pendency of such foreclosure proceedings; and (Z) such Lender shall agree with the CIC and the Owner in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Agreement as are reasonably susceptible of being complied with by such Lender.

Section 4.7 Right to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of Developer's default or breach of a mortgage, deed of trust or other security instrument with respect to the Property prior to the issuance of a Certificate of Completion, and the holder of such security has not exercised its option to complete the development, the CIC and/or Owner may cure the default prior to completion of any foreclosure. In such event, the CIC and/or Owner shall be entitled to reimbursement from Developer of all costs and expenses incurred by the CIC and/or Owner in curing the default. Developer shall promptly provide to the CIC and Owner any and all notices of default or breach of any mortgage, deed of trust or other security instrument with respect to the Property.

## ARTICLE V INDEMNIFICATION AND INSURANCE

Section 5.1 Indemnity. Developer shall indemnify, defend and hold harmless the CIC, Owner, the City, and their respective boards, commissions, councils, officers, employees, and agents (collectively, the "**Indemnitees**") from and against any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses which arise (including reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to any or all of the Indemnitees of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires any or all of the Indemnitees to take any action (collectively, "**Indemnified Claims**") and in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Property, or any part thereof, whether the person or property of Developer or its Agents, or their invitees, guests or business visitors (collectively, "**Invitees**"), or third persons, resulting from any use or activity by Developer or its Agents under this Agreement, (b) any failure by Developer to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, or (c) the use of the Property or any activities conducted thereon under this Agreement by Developer, its Agents or Invitees. Developer agrees to defend the Indemnitees against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false. The foregoing indemnity shall survive beyond the termination of this Agreement. Notwithstanding anything contained herein, the foregoing indemnity shall not apply to any loss due to conditions on the Property in existence prior to the Effective Date of this Agreement.

Section 5.2 Developer shall not be responsible for (and such indemnity shall not apply to) any loss due to the sole or active negligence or willful misconduct of the person being

indemnified (the CIC, Owner, or the City as the case may be) or its respective agents, servants, employees or contractors.

### Section 5.3 Insurance.

(a) Liability and Property Damage Insurance. Developer shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Project. The limits of such insurance shall be not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage. Owner shall be named as an additional insured and loss payee on an endorsement, such coverage shall be primary and shall not seek contribution from Owner or its Risk Sharing Pool.

(b) Workers' Compensation Insurance. Developer shall carry or cause to be carried workers' compensation insurance covering all persons employed in connection with the Project and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Owner or Developer.

(c) Builders' Risk Insurance. During the course of construction of the Project, Developer shall provide or cause to be provided a standard builders' all risk policy in amounts such that the proceeds of such insurance shall not be less than the replacement value of the construction, insuring the interests of Owner, Developer and any contractors and subcontractors.

(d) Developer shall cause the construction contractors and subcontractors to provide the following insurance coverages:

(i) Comprehensive, broad form general liability insurance, including products and completed operations, in an amount not less than One Million Dollars (\$1,000,000), combined single limit. The completed operations coverage shall be maintained for at least two (2) years following completion of construction.

(ii) Liability insurance for owned, hired and non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

(iii) Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

(e) During the term of the Ground Lease, Developer shall maintain, or cause to be maintained, throughout the term of this Agreement, the insurance required by the Ground Lease.

(f) General Requirements.

(i) All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports, or otherwise acceptable to the CIC's Risk Manager.

(ii) All liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy, if such policy provides a separate aggregate limit per occurrence for the benefit of the Property.

(iii) Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

(iv) Comprehensive general and automobile liability insurance policies shall be endorsed or otherwise provide the following:

(A) Name the CIC, Owner and the City and their commissions, boards, departments, officers, agents and employees, as additional named insureds, as their respective interests may appear hereunder.

(B) All policies shall be endorsed to provide thirty (30) days' advance written notice to CIC's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. Developer covenants and agrees to give, or cause to be given to, the CIC and Owner reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

(v) All insurance required by under this Agreement are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the CIC, Owner, and the City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(g) Developer shall deliver, or cause to be delivered, to the CIC and Owner certificates of insurance and additional insured endorsements in form reasonably satisfactory to the CIC and Owner, evidencing the coverages required hereunder, on or before the Effective Date of this Agreement ("**Evidence of Insurance**"), and Developer shall provide, or cause to be provided to, the CIC and Owner with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Developer shall deliver, or cause to be delivered, to the CIC and/or Owner complete copies of the relevant policies upon request therefor from the CIC and/or Owner.

## ARTICLE VI CONTINUING COVENANTS

Section 6.1 Uses. Developer covenants and agrees for itself, its successors, its assigns



and every successor in interest that, during construction of the Project and thereafter, Developer and its successors and assignees shall devote the Property to the uses specified in the Implementation Plan, the approvals applicable to the Project, the Ground Lease, the Affordable Housing Agreement, and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the Property.

Section 6.2 Obligation to Refrain from Discrimination. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property in violation of any federal, state, or local law or regulation. The foregoing covenants shall run with the Property.

Section 6.3 Form of Nondiscrimination and Nonsegregation Clauses. Developer shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person or in violation of any federal, state, or local law or regulation. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses, as such clauses may be amended by applicable law following the effective date of this Agreement:

(a) In Deeds:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases:

“(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts:

“(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

Section 6.4 Effect and Duration of Covenants.

(a) Duration of Covenants. Except as otherwise provided in the documents referenced in Section 6.1 above, the covenants contained in this Article VI shall remain in effect for fifty-nine (59) years, except that the covenants against discrimination shall remain in effect in

perpetuity. The covenants established in this Article VI shall, without regard to technical classification and designation, be binding for the benefit and in favor of the CIC, its successors and assigns, Owner, the City and any successor in interest to the Property or any part thereof.

(b) CIC Beneficiary. The CIC is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the Property for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the Property have been provided. This Agreement and the covenants shall run in favor of the CIC without regard to whether the CIC has been, remains or is an owner of any Property or interest therein in the Property. The CIC shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

Section 6.5 Transfer. The qualifications and identity of Developer are of particular concern to the CIC and Owner, and it is because of these qualifications and identity that the CIC and Owner have entered into this Agreement with Developer. No voluntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(a) Prior to issuance of a Certificate of Completion pursuant to Section 3.14 above, except as provided in Section 4.6(b) above, Developer shall not sell, convey or otherwise transfer its interest in the Property and/or assign its interest in this Agreement without the consent of the CIC and Owner, which may be granted or denied in the CIC's or Owner's sole discretion; provided, however, the CIC's and Owner's prior written consent shall not be required for a transfer to a Permitted Transferee (as defined below). Any attempt by Developer to sell, convey or otherwise transfer its interest in the Property or assign or transfer this Agreement other than to a Permitted Transferee in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Agreement. The parties acknowledge that Satellite Housing and HCEB intend to create a California nonprofit public benefit corporation (the "**Nonprofit Lessee Entity**") and assign their interests as Developer to the Nonprofit Lessee Entity. Subsequently, the parties hereto acknowledge that Developer intends to assign its interests in this Agreement and in the Ground Lease to the Nonprofit Lessee Entity. Thereafter, the Nonprofit Lessee Entity shall (i) be recognized hereunder as (A) the ground lessee under the Ground Lease, and (B) the Developer under this Agreement, and (ii) for purposes of this Section 6.5, shall be the "**Permitted Transferee**"; provided the Nonprofit Lessee Entity assumes all of the obligations of (y) ground lessee under the Ground Lease, and (z) Developer's obligations hereunder. Notwithstanding the foregoing, the CIC and Owner acknowledge that some or all of the development of the Project may be performed by Developer's Agents, and such performance shall not be construed as an assignment or transfer by Developer of this Agreement.

## ARTICLE VII REMEDIES

Section 7.1 Application of Remedies. The following shall govern the Parties'

remedies for default or failure of this Agreement.

Section 7.2 No Fault. If despite good faith efforts by Developer, Commencement of Construction has not occurred by July 31, 2014 (a) due to Unavoidable Delay or (b) if Developer is unable to obtain commitments for sufficient funding to construct the Project within thirty-six (36) months of the Effective Date of this Agreement, at the election of any Party hereto, this Agreement may be terminated by written notice to the other parties. Thereafter, none of the parties shall have any rights against or liability to the other parties except as set forth in Sections 7.5 and 7.8 below, and any payment, indemnity, insurance, and legal fee obligations of a party hereto contained herein, which shall survive any such termination.

Section 7.3 Fault of CIC. If the CIC shall be in default under this Agreement, Developer shall first notify the CIC in writing of its purported breach or failure, giving the CIC thirty (30) days from receipt of such notice to cure such breach or failure. In the event the CIC does not cure the noticed default within thirty (30) days (or with respect to a default that cannot reasonably be cured within thirty (30) days, the CIC does not commence to cure such default within such (30) thirty day period or does not thereafter diligently pursue such cure to completion), Developer shall be entitled to any rights afforded to Developer in law or in equity, including without limitation, enforcement of obligations through specific performance or payment of damages.

Section 7.4 Fault of Developer. If Developer shall be in default under this Agreement, the CIC shall first notify Developer in writing of its purported breach or failure giving Developer thirty (30) days from receipt of such notice to cure such breach or failure. In the event Developer does not cure the noticed default within thirty (30) days (or with respect to a default that cannot reasonably be cured within thirty (30) days, Developer does not commence to cure such default within such (30) thirty day period or does not thereafter diligently pursue such cure to completion), the CIC thereafter shall be entitled to any rights afforded the CIC in law or in equity by taking any or all of the following remedies: (a) terminating in writing this entire Agreement and the CIC's obligations under this Agreement; (b) prosecuting an action for damages; (c) prosecuting an action for specific performance; (d) the remedies specified in Sections 7.5 and 7.8 below; and (e) any other remedies specified under this Agreement.

Section 7.5 Plans, Data and Approvals. If this Agreement is terminated pursuant to Sections 7.2 or 7.4 above, Developer shall grant to CIC and Owner, the limited right and license to use the Plans exclusively for the purposes of constructing the Project. CIC and Owner acknowledge and agree that: (a) CIC or Owner shall only be entitled to use such Plans in constructing the Project on the Property and at no other location; (b) the Plans may not be sold or otherwise transferred or assigned, except to the CIC and Owner or to a purchaser of the Property, but only after such purchaser signs a written agreement acknowledging and agreeing to the terms and conditions of the license and provides Developer with an indemnity and release substantially similar to the applicable provisions set forth below; (c) the name Satellite Housing, Inc. or Housing Consortium of the East Bay or any variation thereof, shall not be used or referenced in connection with the construction or leasing of any residential units constructed based upon the Architectural Plans; (d) the Plans were prepared for Developer's purposes, and prior to its use of the Plans, CIC or Owner, as applicable, shall have its own architects and structural engineers certify that the Plans are free from errors, omissions or other defects and

shall make such revisions to the Plans to enable CIC's or Owner's, as applicable, architect and structural engineer to make such certification; and (e) neither CIC, Owner, nor their successors and assigns shall be entitled to enforce against Developer or any other third parties any rights, claims (including copyright infringement claims) or demands relating to or in any way connected with state or federal copyright protection of the Plans, all such copyrights and protections being fully retained by Developer, as its interests may appear.

Section 7.6 Existing Contracts. If this Agreement is terminated pursuant to Sections 7.2 or 7.4 above, the CIC shall be obligated to pay all reasonable fees owed and expenses incurred prior to the termination under the necessary and reasonable contracts entered into by Developer for construction of the Project.

Section 7.7 Loan Assignment. If CIC or Owner terminates this Agreement pursuant to Sections 7.2 and 7.4 above, Developer agrees to assign the CIC Loan to another qualified developer the CIC may select, in its sole discretion, to develop and construct the Project and provided such developer assumes in writing the CIC Loan, then Developer shall be relieved of its obligation to repay the CIC Loan.

Section 7.8 Fraud. Notwithstanding anything to the contrary in this Agreement, including, without limitation relief from repayment pursuant to Section 7.7 above, no provision of this Agreement shall in any way affect any rights any Party to this Agreement may have to recover any funds, damages or costs incurred as a result of fraud or willful misconduct.

## ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications. Formal notices, demands, and communications between the CIC, Owner, and Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, reputable overnight delivery service, facsimile transmission or delivered personally, to the principal offices of the CIC, Owner, and Developer as follows:

CIC:	Community Improvement Commission of the City of Alameda 2263 Santa Clara Avenue, Room 320 Alameda, CA 94501 Attention: Interim Executive Director Telephone: (510) 747-4700 Facsimile: (510) 747-4704
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Owner:	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attention: Executive Director Telephone: (510) 747-4320 Facsimile: (510) 522-7848
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with copy to: City of Alameda  
2263 Santa Clara Avenue, Room 280  
Alameda, CA 94501  
Attention: City Attorney  
Telephone: (510) 747-4750  
Facsimile: (510) 747-4767

Developer: Satellite Housing, Inc.  
1521 University Avenue  
Berkeley, CA 94703  
Attention: Executive Director  
Telephone: (510) 647-0700  
Facsimile: (510) 647-0820

and to: Housing Consortium of the East Bay  
1736 Franklin Street, 6th Floor  
Oakland, CA 94612  
Attention: Executive Director  
Telephone: (510) 828-6295  
Facsimile: (510) 832-1743

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice given as provided in this Section 8.1.

Section 8.2 Estoppel Certificate. Each party hereto shall, at any time, and from time to time, within fifteen (15) days after receipt of written notice from another party hereto, execute and deliver to such party a written statement certifying that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties (if such be the case); (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (c) the requesting party is not in default in the performance of its obligations under the this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

Section 8.3 Conflict of Interests. No member, official or employee of the CIC or Owner shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 8.4 Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of the CIC or Owner shall be personally liable to Developer, its successors and assigns, in the event of any default or breach by the CIC and/or Owner or for any obligation of the CIC and/or Owner under this Agreement, nor shall any officer, director, shareholder, partner or employee of Developer be personally liable to the CIC or Owner, their successors or assigns, in the event of any default or breach by Developer or for any obligation of Developer under this Agreement.

Section 8.5 Enforced Delay. In addition to specific provisions of this Agreement, performance by Developer shall not be deemed to be in default where delays or defaults are due to war; terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; shortage of materials; inclement weather; lack of transportation; court order; actions or inaction by the City, or any other governmental agency other than the CIC or Owner; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Project or any portion thereof) beyond the control or without the fault Developer. Developer shall notify the CIC and Owner within ten (10) days of the commencement of the cause of any such delay. Such notice shall specify the cause of such delay, the reason for the applicability of this section and requested length of such extension which shall be consistent with the source of such delay. Failure to give notice under this Section shall not be deemed a waiver of any right to claim enforced delay. Times of performance under this Agreement may also be extended by written agreement of the CIC, Owner, and Developer.

Section 8.6 Inspection of Books and Records. The CIC and/or Owner shall have the right at all reasonable times, upon twenty-four (24) hours written notice, to inspect, on a confidential basis the books, records and all other documentation of Developer pertaining to its obligations under this Agreement.

Section 8.7 Approval By Executive Director or Chief Executive Officer. Where approval or consent of the CIC or Owner is required under this Agreement, such approval or consent may be given by the CIC Executive Director or Owner's Chief Executive Officer (or Owner's Executive Director, as authorized), respectively.

Section 8.8 Brokerage Commissions. None of the parties hereto shall be liable for any real estate commissions or brokerage fees which may arise as a result of this Agreement. The Parties hereto each represent that it has not engaged any broker, agent or finder in connection with this transaction. Each Party agrees to indemnify, defend and hold the other Parties harmless from any claims and liability, including reasonable attorneys' fees and court costs, in connection with a claim by any person or entity for a real estate commission or brokerage fee based on contacts between the claimant and the indemnifying Party.

Section 8.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by any Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by another Party.

Section 8.10 Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 8.11 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties; provided, however, that there shall be no transfer of any interest by any of the Parties except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 8.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.14 Non-Discrimination. Developer shall not discriminate in the employment of persons because of race, color, creed, religion, age, sex, sexual orientation, marital status, sexual orientation, physical or mental disability or medical condition, national origin or ancestry of such person. Developer shall require its Agents to ensure that all consultant contracts and construction contracts for the Project, contain this provision against discrimination or provide that its consultants and contractors shall comply with all applicable laws which would include laws prohibiting discrimination on these bases.

Section 8.15 Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by the Party granting the waiver, and only to the extent expressly provided in such written waiver.

Section 8.16 Attorneys' Fees. If any Party institutes any action or proceeding in court or before an arbitrator to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing Party shall be entitled to receive from the other Party(ies) court or arbitration costs or expenses incurred by the prevailing Party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or arbitrator may judge to be reasonable attorneys' fees for the services rendered to the prevailing Party in such action or proceeding.

Section 8.17 Time. Time is of the essence of this Agreement.

Section 8.18 Title of Articles and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.19 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

Section 8.20 Entire Understanding of the Parties. This Agreement and all attached exhibits to the foregoing documents constitute the entire understanding and agreement of the Parties. This Agreement shall not be modified except by written instrument executed by an officer or other authorized representative of all Parties hereto.

Section 8.21 Counterparts. This Agreement may be executed in multiple counterpart copies, any one of which when duly executed with all of the formalities hereof, shall be fully



binding and effective as the original of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CIC:

Community Improvement Commission of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Executive Director

Approved as to form:

By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

OWNER:

Housing Authority of the City of Alameda,  
a public body corporate and politic

Approved as to form

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director

By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

*[Signatures continue on following page.]*

DEVELOPER:

Satellite Housing, Inc.  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

and

Housing Consortium of the East Bay,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

Legal Description of the Property

(Attached)

Exhibit B

Schedule of Performance

(Attached)

Exhibit C

Scope of Development

(Attached)

Exhibit D

Certificate of Completion

**CERTIFICATE OF COMPLETION**

The Community Improvement Commission of the City of Alameda, a public body corporate and politic (the “**CIC**”) and the Housing Authority of the City of Alameda, a public body, corporate and politic (the “**Housing Authority**”), certify that the construction of the Project (as defined in the OPA (as defined below)) in accordance with the provisions of that certain OPA (as defined below) has been completed. The OPA relates to certain real property located in the City of Alameda, the County of Alameda and the State of California (the “**Property**”). The Property is more particularly described in the OPA.

The CIC, the Housing Authority, and Satellite Housing, Inc., a California nonprofit public benefit corporation (“**Satellite Housing**”), and Housing Consortium of the East Bay, a California nonprofit public benefit corporation (“**HCEB**”) (jointly (Satellite Housing and HCEB), “**Developer**”) entered into that certain Owner Participation Agreement (2216 Lincoln), dated as of \_\_\_\_\_, 2011 (the “**OPA**”). Pursuant to that certain Assignment and Assumption Agreement (Owner Participation Agreement) (2216 Lincoln) dated as of \_\_\_\_\_, Developer assigned and delegated to \_\_\_\_\_, a \_\_\_\_\_ (the “\_\_\_\_\_, as Assignee”), and the Assignee assumed and agreed to perform, all of Developer’s rights, obligations, and agreements under the OPA.

This Certificate of Completion shall be a conclusive determination of satisfactory completion of construction of the Project (as defined in the OPA) required by the OPA.

***[Remainder of page intentionally blank; signatures follow.]***

CIC:

Community Improvement Commission of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Executive Director

Approved as to form:

By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

Housing Authority:

Housing Authority of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director

Approved as to form:

By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

Exhibit E

Form of Promissory Note – CIC Loan

(Attached)



Exhibit F

Development Budget

(Attached)

Exhibit G

Form of Affordable Housing Agreement

(Attached)